IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Smt. Rukhmani Devi
vs.
Municipal Board, Jaisalmer & others.

S.B.CIVIL SECOND APPEAL NO.216/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 31.5.2003 PASSED BY SHRI P.L. HISSARIA, DISTRICT JUDGE, JAISALMER IN CIVIL APPEAL NO.5/2001.

DATE OF JUDGMENT ::: 10.5.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Purohit, for the appellant.

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BY THE COURT:

Heard learned counsel for the appellant.

The suit was filed by the plaintiff/appellant alleging that the plaintiff is onwer of the property and she is having one written document executed in the Erstwhile state time. She also submitted application for getting the water connection and applied for road cutting also. The property

was mortgaged in Samwat Year 1998 and the plaintiff's husband was working as Executive Officer in the Municipal Board. He died in the year 1968. The plaintiff also admitted that the plaintiff's possession was threatened by the Municipal Board time and time. According to the plaintiff, the defendant has no right to evict the plaintiff from the suit property, therefore, the plaintiff filed the suit for mere injunction knowing it well that the title of the plaintiff has been denied by the defendant.

The defendant submitted detailed written statement and disclosed that the plaintiff's son was in service and he submitted an application for raising construction which was dismissed by the Municipal Board and appeal was also dismissed. It is submitted that no construction was raised by the appellant on the plot in dispute at any point of time which is apparent from the various orders passed by the authorities.

After considering all those facts, the trial court dismissed the suit of the plaintiff by judgment and decree dated 20.12.2000 and the appeal against the said judgment and decree was dismissed vide judgment and decree dated 31.5.2003.

Learned counsel for the appellant/plaintiff vehemently submitted that the appellant is in peaceful possession of the suit property since long, therefore, the respondents cannot evict the appellant without following due procedure

of law. It is also submitted that it was not necessary for the plaintiff to file the suit for declaration of title and mere injunction could be filed, for which learned counsel for the appellant relied upon the judgment of this Court (by me) in the case of Urban Improvement Trust, Udaipur vs. Narayan Lal & another reported in 2004 WLC (Raj.) UC 566.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by two courts below.

It is clear from the concurrent finding of facts recorded by the two courts below that the plaintiff made some efforts to keep the possession of the suit property with the help of obviously her husband as well as her son over the government land and for which the plaintiff's son tried to initiate certain proceedings which went against the plaintiff and the plaintiff thereafter did not tried to establish his title over the property and is now seeking injunction on the ground of mere possession. Two courts below did not found the possession to be old one or settled. In view of the above, the trial court as well as the appellate court has not committed any error of law. So far as judgment of this Court in the case of Narayan Lal (supra) is concerned, it is clear that this Court found that the possession of the plaintiffs was proved to be old and settled one and the defendant did not prove the title and could not rebut the claim of the plaintiffs, therefore, in that fact circumstances, it has been held that the

declaration of title in all cases where injunction is sought is not necessary. The said judgment has no application in the present case.

In view of the above, no substantial question of law arises in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya